

Exhibit D
Delegate Agency Grant Agreement
Enhanced Gonorrhea Surveillance Activities /
Safety Net Sexually Transmitted Disease Clinical Preventive Services

TERMS AND CONDITIONS

ARTICLE 1: FUNDING CHANGES, TERM CHANGES

1.1 DEOBLIGATION / REPROGRAMMING OF FUNDS

At any time upon written notice to you the City, in its sole discretion, including without limitation based on periodic reviews of the spending levels under this Agreement, may reduce the Maximum Compensation and/or Committed Compensation. Upon reduction of the Maximum Compensation and/or Committed Compensation, you will fully cooperate with the City's deobligation and/or reprogramming of funds. See Article 4, *Compensation*, and other provisions for further terms and conditions related to compensation under this Agreement.

1.2 [intentionally omitted]

1.3 EARLY TERMINATION

In addition to its termination rights under Section 4.3, *Reduction of Compensation*, and Article 7, *Events of Default & Remedies*, the City may terminate this Agreement, or any portion of it remaining to be performed, at any time, (a) upon written notice to you and, if required by applicable law or regulation, with your consent, and (b) upon written notice to you if HHS terminates or suspends the Grant. If the City terminates this Agreement, other than pursuant to Section 4.3 or Article 7, then you will agree with the City upon termination conditions including, in the case of a partial termination, the portion to be terminated. The effective date of termination will be the later of the effective date stated in the notice or, if no date is given, the date the notice is considered received as provided under Article 9, *Notices*, of this Agreement.

You may terminate this Agreement upon 30 calendar days prior written notice to the City setting forth the reasons for the termination, the effective date and, in the case of a partial termination, the portion to be terminated, provided, however, that if you give notice of a partial termination, the City may terminate this Agreement in its entirety in accordance with 45 CFR 75.372.

Upon termination of this Agreement, you will deliver to the City all finished or unfinished documents, data, studies, and reports prepared by you under this Agreement. Payment for the work performed before the effective date of such termination will be based upon a proration of the work actually performed by you to the date of termination, as determined by the Commissioner. Payment made by the City, pursuant to such proration, will be in full settlement for all Services rendered by you.

You must include in your contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision. You will not be entitled to make any early termination claims against the City resulting from any subcontractor's claims against you or the City.

1.4 YOUR CONTRIBUTIONS

You will contribute to the payment of expenses incurred in performing the Services, the amounts, if any, described in Exhibit A. Your contribution will be cash or in-kind.

1.5 NON-APPROPRIATION

Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the City, State and/or Federal authorities, if applicable. No payments will be made or due to you under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement. The City's obligations hereunder shall cease immediately, without penalty or further payment being required, if the City Council of the City, the Illinois General Assembly and/or federal funding source(s) fails to make an appropriation sufficient to fund this Agreement.

If no funds or insufficient funds are appropriated and budgeted in any fiscal period for payments to be made under this Agreement, the City will notify you in writing of such occurrence. The City, at its sole discretion, shall determine whether amounts appropriated are sufficient to continue its obligations under this Agreement. This Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Termination of this Agreement or reduction of compensation resulting from non-appropriation or insufficient appropriation shall be in accordance with Section 4.3, *Reduction of Compensation*. Any grant is void by operation of law if the City fails to obtain the requisite appropriation to pay the grant in any year in which this Agreement is in effect.

ARTICLE 2: YOUR DUTIES

2.1 SCOPE OF SERVICES (WORK PROGRAM)

You will carry out the Services pursuant to the Scope of Services (Work Program), attached as Exhibit B, and the Budget Summary, attached as Exhibit A, in accordance with the requirements of this Agreement. The Scope of Services (Work Program) is intended to be general in nature and is neither a complete description of your Services nor a limitation on the Services which you will provide. "**Services**" means, collectively, the services, duties and responsibilities described in this Article 2 and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

2.2 STANDARD OF PERFORMANCE

You will perform all Services with the degree of skill, care and diligence normally shown by a contractor performing services of a scope, purpose and magnitude comparable with the Services ("**Standard of Performance**"). You will use your best efforts on behalf of the City to assure timely and satisfactory completion of the Services. You acknowledge that in the performance of the Services, **TIME IS OF THE ESSENCE**.

You acknowledge that you are entrusted with or have access to valuable and confidential information and records of the City and with respect to that information, you agree to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or payment for any Services by the City does not relieve you of your responsibility for the professional skill and care and technical accuracy of the Services. This provision in no way limits the City's legal or equitable rights against you.

If you fail to comply with the Standard of Performance, you must, at the City's option, perform again, at your own expense, all Services required to be re-performed as a direct or indirect result of that failure, unless the reason is failure to have and maintain required licensure. See subsection 8.1(A), *Warranties and Representations*, regarding failure to comply with licensure requirements.

2.3 YOUR PERSONNEL; BACKGROUND CHECKS

If assignment of personnel is required for the proper completion of the Services or is otherwise required by this Agreement, then you will assign immediately and maintain for the duration of the Services, a staff of competent personnel that is fully licensed, equipped, competent and qualified to perform the Services. You will retain and make available to the City, state and federal agencies governing funds provided under this Agreement, proof of certification or expertise including, but not limited to, licenses, resumes and job descriptions.

If you provide any Services to children you shall, at your own cost and expense, comply with all applicable Federal, State and local laws, ordinances, policies, procedures, regulations, rules, requirements and executive orders relating to background checks, fingerprinting and screening procedures as in effect from time to time (the "**Legal Requirements**"). In connection with the Services, you will not permit any adult, whether a member of your staff or otherwise, to be involved with the Services or to have direct contact with children if any applicable Legal Requirements would prohibit such adult from having such involvement or contact.

2.4 MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISE PROCUREMENT PROGRAM

- A. If your Scope of Services (Work Program) is solely limited to social services (including, but not limited to, job training and placement, education, child day care, emergency shelter, home-delivery meals and health care), you need not comply with the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "**MBE/WBE Ordinance**"), Section 2-92-420 et seq of the Municipal Code of Chicago, as amended (the "**Municipal Code**") or with Section 2-92-586 (Contracts-Firms Owned or Operated by Individuals with Disabilities) of the Municipal Code.
- B. If, however, your Scope of Services (Work Program) includes construction, renovation, rehabilitation or facility enhancement, you must comply with the MBE/WBE Ordinance and with Section 2-92-586 of the Municipal Code, except to the extent waived by the Chief Procurement Officer.

2.5 NON-DISCRIMINATION

In performing the Services under this Agreement, you must comply with applicable laws prohibiting discrimination against individuals and groups.

A. Federal Requirements

In performing the Services under this Agreement and in your employment practices you must not engage in unlawful employment practices, such as:

- i. failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of such individual's race, color, religion, sex, age, handicap/disability or national origin; or
- ii. limiting, segregating, or classifying your employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of that individual's race, color, religion, sex, age, handicap/disability or national origin.

You must comply with, and the procedures you utilize and the services you provide under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., as amended and the Civil Rights Act of 1991, P.L. 102-166; Fair Housing Act, 42 U.S.C. § 3601-3619; Executive Order No. 11246, as amended by Executive Order No. 11375 and by Executive Order No. 12086; Executive Order 13160 (2000); the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6106; Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-83 and 1685-86); the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; 41 CFR part 60 et seq. (1990); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193); and all other applicable federal statutes, regulations and other laws.

B. State Requirements

In performing the Services under this Agreement, you must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. and any rules and regulations promulgated thereunder, including, but not limited to, the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A, and all other applicable state statutes, regulations and other laws.

C. City Requirements

In performing the Services under this Agreement, you must comply with the Chicago Human Rights Ordinance, Municipal Code § 2-160-010, and all other applicable City ordinances and rules. Further, you must furnish, and cause every subcontractor to furnish, such reports and

information as may be requested from time to time by the Chicago Commission on Human Relations.

D. Subcontractors Required to Comply

You will incorporate all of the provisions set forth in this Section in all subcontracts entered into with all suppliers of materials, furnishers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with this Agreement.

You must cause your subcontractors to execute such certificates as may be necessary in furtherance of these provisions. Such certifications will be attached and incorporated by reference in the applicable subcontracts. If any subcontractor is a partnership or joint venture, you will also include provisions in your subcontract insuring that the entities comprising such partnership or joint venture will be jointly and severally liable for the partnership's or joint venture's obligations under the subcontract.

2.6 INSURANCE

You must provide and maintain or cause to be provided during the Term the insurance coverages and requirements specified in Exhibit F, insuring all operations related to this Agreement. You must submit Certificates of Insurance of the required coverages **prior** to this Agreement being fully executed to GPAD_DA_Insurance@cityofchicago.org or to such other email address and/or website location specified by the City.

2.7 INDEMNIFICATION

- A. You must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses, including those related to:
- i. injury, death or damage of or to any person or property;
 - ii. any infringement or violation of any property right (including any patent, trademark or copyright);
 - iii. failure to pay or perform or cause to be paid or performed your covenants and obligations as and when required under this Agreement or otherwise to pay or perform your obligations to any subcontractor;
 - iv. the City's exercise of its rights and remedies under this Agreement; and
 - v. injuries to or death of any of your employees or those of any subcontractor under any workers compensation statute.
- B. "**Losses**" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of you, your employees, agents and subcontractors.
- C. At the City Corporation Counsel's option, you must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving you of any of your obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.
- D. To the extent permissible by law, you waive any limits to the amount of your obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any of your employees that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or

any other law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute. Your waiver under this provision, however, is not intended and does not require you to indemnify the City for the City's own negligence in violation of the Construction Contract Indemnification for Negligence Act ("**Anti-Indemnity Act**"), 740 ILCS 35/0.01 et seq., if the Anti-Indemnity Act applies.

- E. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the Term or as the result of or during your performance of Services beyond the Term. You acknowledge that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by your duties under this Agreement, including the insurance requirements under Section 2.6, *Insurance*. If a court or other governmental authority having competent jurisdiction determines any portion or provision of this Section to be inoperative or unenforceable under the Anti-Indemnity Act, the inoperative or unenforceable portion or provision will be deemed severed and deleted, and the remaining provisions will remain enforceable to the maximum extent permitted by applicable law.

2.8 NON-EXPENDABLE PERSONAL PROPERTY

You will comply with all Federal, State and local laws and ordinances regarding property ownership, use and management.

You will request and receive written authorization from the City and HHS prior to the purchase of tangible personal property having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit with funds received pursuant to this Agreement ("**Non-expendable Personal Property**"). All Non-expendable Personal Property will be the property of the City to the extent that such property is not the property of the federal government or the State of Illinois.

You will maintain a current inventory listing of such Non-expendable Personal Property and will deliver a copy of such listing to the City on an annual basis. You will comply with 45 CFR 75.320 in your management of Non-expendable Personal Property.

When procuring equipment, you must comply with the procurement standards at 45 CFR 75, which requires the performance and documentation of some form of cost or price analysis with every procurement action.

You will return all Non-expendable Personal Property to the City, upon the termination of the Services, completion of this Agreement or at any time requested by the Department. However, upon the receipt of the final inventory of all Non-expendable Personal Property, the City may allow such property to remain in your possession if the City, in its sole discretion, determines that the Non-expendable Personal Property is necessary for the performance of any new or other services by you for the City.

When this Agreement expires or is terminated, you will return to the City the balance of any funds received under this Agreement and any accounts receivable attributable to those funds. In addition, if you acquired or improved real property with funds received under this Agreement, then you will comply with 45 CFR 75.318.

2.9 SUBCONTRACTS

All subcontracts and all approvals of subcontractors, regardless of their form, will be deemed to be conditioned upon performance by the subcontractor in accordance with the terms and conditions of this Agreement. The approval of subcontractors will under no circumstances operate to relieve you of any of your obligations or liabilities under this Agreement.

Upon entering into any subcontract, you will furnish the City with one copy of the subcontract for distribution to the Department. All subcontracts will contain provisions that require the Services to be performed in strict accordance with the terms and conditions of this Agreement and that the subcontractor is subject to all of the terms and conditions of this Agreement, including the rights of the City to approve or disapprove of the use of any subcontractor. As long as such subcontracts do not prejudice any of the

City's rights under this Agreement and do not affect the quality of the Services to be rendered in any way, subcontracts may contain different provisions than are provided in this Agreement.

2.10 PROGRAM INCOME

You will return to the City all gross income received by you that is directly generated by the use of funds received from the City ("**Program Income**"), in any form or manner the City requires. Program Income is defined in 45 CFR 75.307. The City may require you to return all or part of any Program Income balances you hold at the end of the program year, subject to the exceptions described in 45 CFR 75.307.

2.11 RELIGIOUS ACTIVITIES

- A. You warrant that you will not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of or while carrying out the funded programs or services.
- B. You warrant that if you do engage in inherently religious activities, such as worship, religious instruction, or proselytization,
 - i. such activities will always be conducted separately, in time or location, from the funded programs or services; and
 - ii. any participation in such activities on the part of beneficiaries of the funded programs or services must be wholly voluntary.
- C. You warrant that you will not discriminate against a beneficiary or prospective beneficiary of the funded programs or services on the basis of religion, religious belief, or participation or nonparticipation in any inherently religious activities.
- D. If the Agreement involves any grant of funds for the acquisition, construction, or rehabilitation of structures, you warrant:
 - i. The room or space that the Grant funds will be used to acquire, construct or rehabilitate is not your primary place of worship; and
 - ii. Grant funds will be used only for those portions of the acquisition, construction, or rehabilitation of the structures that are attributable to eligible activities; and
 - iii. If in the future the structure is used for inherently religious activities or otherwise ceases being used for eligible activities, you will adhere to the rules on real property use and disposition and government reimbursement found in 45 CFR 75.318.
- E. With respect to a child receiving Services, for purposes of this section, "beneficiary" shall include such child and, in addition, his or her parents, guardians, other responsible adults and family members.

2.12 DRUG-FREE WORKPLACE

You certify that neither you nor your employees shall engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of this Agreement. You must administer a policy designed to ensure that the program facility is free from the illegal use, possession, or distribution of drugs or alcohol by your beneficiaries. You must further maintain a drug free workplace in accordance with the requirements of the Drug Free Workplace Act of 1988 (Pub. L. 100-690 and 24 CFR 21), and the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.) and must implement specific policies and guidelines as may be adopted by the City. In addition, you must execute certifications pursuant to the Drug Free Workplace Act of 1988, as may be requested by the Department.

You will establish procedures and policies to promote a drug free workplace. Further, you will notify all employees of your policy for maintaining a drug free workplace, and the penalties that may be imposed for drug abuse violations occurring in the workplace. You will notify the City if any of your employees are convicted of a criminal drug offense in the workplace no later than 10 calendar days after such conviction.

2.13 ACKNOWLEDGMENT OF FUNDING SOURCES

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- A. You will not make any public announcement with respect to the Services without the prior written approval of the City and advance notice to HHS. You will conspicuously acknowledge the co-sponsorship of the City and HHS on all promotional materials including, but not limited to, brochures, flyers, written or electronic public notices, news releases, public service announcements, acknowledgments at any special events intended to promote the Services, or solicitation of the private sector. You will not attribute any statement to the City without the City's prior written approval.

All reports, maps and other documents completed as part of this Agreement, other than documents exclusively for internal use within the City, will contain the following information in a conspicuous place on the front of the report, map or document:

- i. the name of the City of Chicago;
 - ii. the month and year of preparation; and
 - iii. the name of the project.
- B. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, you will clearly state:
- i. the percentage of the total costs of the program or project which will be financed with federal money;
 - ii. the dollar amount of federal funds for the project or program; and
 - iii. the percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

Such statement must not represent or suggest in any way that the views expressed are those of the federal government.

ARTICLE 3: REPORTING, MONITORING & DOCUMENTATION

3.1 REPORTING REQUIREMENTS

The City will set forth the specific reporting requirements, if any, in the Scope of Services (Work Program) attached as Exhibit B.

You agree, at all times during which you have active federal awards, to (a) maintain a current registration with the System for Award Management ("**SAM**") database or complete such other registration requirements as determined by the Director of the U.S. Office of Management and Budget, (b) obtain a Dun and Bradstreet Data Universal Numbering System ("**DUNS**") number or update your existing DUNS record, one of the requirements for registration in the SAM database, and (c) provide to the City all information required for reporting under the Federal Funding Accountability and Transparency Act (P.L. 109-282, as amended by Section 6202(a) of P.L. 110-252), including without limitation entity information, DUNS number, parent DUNS number, if applicable, and executive compensation data.

3.2 RECORDS; FOIA AND LOCAL RECORDS ACT COMPLIANCE

You will maintain and make available to the City information such as, but not limited to, dates of and reports or memoranda describing your activities that is necessary to assist the City in its compliance with all applicable laws. You will maintain all documents pertaining to this Agreement including, but not limited to, all financial, statistical, property and participant information documentation.

You will retain books, documentation, papers, records and accounts in connection with this Agreement in a safe place for at least **5 years** after the City and, if applicable, the federal government determines that you have met all closeout requirements for this Agreement (and, if later, (a) until any related litigation, claim or audit started during such 5-year period is finally resolved and (b) 4 years after disposing of any real property and equipment bought with Grant funds), and will keep them open to audit, inspection, copying, abstracting and transcription, and will make these records available to the City, HHS, or the

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United States Comptroller General at reasonable times during the performance of your Services and for the time period specified in this paragraph. You will comply with the record retention requirements contained in 45 CFR 75.361 - .365.

If you conduct any business operations separate from the Services using any personnel, equipment, supplies or facilities also used in connection with this Agreement, then you will maintain and make available to the City, HHS and the United States Comptroller General detailed records supporting your allocation of the costs and expenses attributable to any such shared usages.

You will maintain books, records, and documents, and will adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted federal accounting principles and practices, as set forth in 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awardees* (the "**OMB Super Circular**").

Your failure to maintain any books, records and supporting documents required by this Section will establish a presumption in favor of the City for the recovery of any funds paid under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

No provision in this Agreement granting the City a right of access to records and documents impairs, limits or affects any right of access to such records and documents that the City would have had in the absence of such provisions.

You must maintain and provide to the City the following information and documents within the time periods indicated: (A) prior to this Agreement being fully executed, a copy of the executed lease for any real property you use in connection with the Services, an affidavit stating whether the landlord is a Related Party (as defined below), and with respect to any insurance, utility or other costs not based on your actual use, documentation satisfactory to the City in its sole discretion supporting the allocation of these costs to you; (B) within six months after the end of your fiscal year, annual financial statements that include a statement of your financial position and statement of activities, and a trial balance; provided, that delivery to the City of an audit conducted in accordance with the OMB Super Circular, and that satisfies all requirements described in Section 3.3, *Audit Requirement*, would satisfy the requirements of this clause (B); (C) within 30 days after the transaction occurs, a report of any transaction between you and any Related Party. For purposes of this Section 3.2, "**Related Party**" means any of your board members, officers or employees, and any relative of any of your board members, officers or employees.

You acknowledge that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., as amended ("**FOIA**"). FOIA requires the City to produce records (as defined in FOIA) in response to a FOIA request in a short period of time, unless the records requested are exempt under FOIA. If the City asks you to produce records within the scope of FOIA, then you covenant to comply with such request within 48 hours of the date of such request. Your failure to timely comply with such request will be a breach of this Agreement. Documents that you submit to the City under this Section or otherwise during the term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents that you submit to be treated as a trade secret or information that would cause competitive harm, FOIA requires that you mark any such documents as "proprietary, privileged or confidential." If you mark a document as "proprietary, privileged and confidential", then the City will evaluate whether such document may be withheld under FOIA. The City, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

You acknowledge that the City is subject to the Local Records Act, 50 ILCS 205/1 et. seq, as amended (the "**Local Records Act**"). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, you covenant to use your best efforts consistently applied to assist the City in its compliance with the Local Records Act concerning records arising under or in connection with this Agreement and the Services contemplated in the Agreement.

3.3 AUDIT REQUIREMENT

If you are a not-for-profit corporation and are expending federal funds under this and other agreements totaling \$750,000 or more during your fiscal year, you must submit an audit conducted in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-07), OMB Super Circular, the compliance requirements set forth in OMB Compliance Supplement, and any additional testing and reporting required by the City. If a single audit is required, that audit must cover the time period specified by the OMB Super Circular and its implementing regulations. Organization-wide audited financial statements must, at a minimum, cover the Term.

If you are a for-profit corporation and are expending federal funds under this and other agreements totaling \$750,000 or more during your fiscal year, then you must submit a program-specific audit of the program(s) funded by the City under this Agreement. This audit must be performed in accordance with program-specific audit requirements contained in Section 200.507 of the OMB Super Circular, *program-specific audits*, and with generally accepted government auditing standards (Government Auditing Standards). The audit must cover the time period specified by the OMB Super Circular for program-specific audits. In addition to the audit opinion, reports, and schedules required by the OMB Super Circular, the program-specific audit shall include the following financial statements:

- Statement of Financial Position (Balance Sheet) (if applicable)
- Statement of Activities (Revenue and Expenses)

If your organization has expended federal funds under this and other agreements totaling less than \$750,000 during your fiscal year, you must submit to City of Chicago Internal Audit at the address below a notarized "Delegate Agency Certification of Federal Expenditures" form certifying that your organization is exempt from Federal audit requirements for that year pursuant to the OMB Super Circular, Section 200.501(d), *Exemption when Federal awards expended are less than \$750,000*. Copies of this Certification form may be obtained from City of Chicago Internal Audit at the address below.

You acknowledge that the City may perform, or cause to be performed, various monitoring procedures relating to your award(s) of federal funds, including, but not limited to, any audits or reviews related to compliance with the grant requirements.

You must submit the audit reports, whether single audit or program-specific audit, within 6 months after your fiscal year-end. You must submit the audit, within this time frame, to the Department and to:

City of Chicago Internal Audit
Attention: OMB Reviews
333 South State Street, Suite 320
Chicago, IL 60604

If an OMB audit is required, you will also submit a copy of the audit via electronic submission, within the same time frame indicated in Sec. 200.512(a), *Report submission*, or Sec. 200.507(c), *Report submission for program-specific audits*, as applicable, of the OMB Super Circular, to the Federal Audit Clearinghouse using the Internet Data Entry System. Further, you must submit, with the audit, a report which comments on the findings and recommendations in the audit, including corrective action planned or taken. If no action is planned or taken, an explanation must be included. Copies of written communications on non-material compliance findings must be submitted to the Department and City of Chicago Internal Audit.

For fiscal years ending September 30, 2009 and later, all Single Audit reports filed with the Federal Audit Clearinghouse (FAC) will be made publicly available on the internet.

The City retains its right to independently audit you.

If you are found in non-compliance with these audit requirements, by either the City or any federal agency, you may be required to refund financial assistance received from the City or the applicable federal agency(ies).

Each of the City, HHS, Government Accountability Office (GAO) and/or the United States Comptroller General may in its sole discretion audit your records or those of your subcontractors, or both, at any time

during the Term or within 5 years after the Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that you or any of your subcontractors have overcharged the City in the audited period, the City will notify you. You must then promptly reimburse the City for any amounts the City has paid you due to the overcharges and also some or all of the cost of the audit, as follows:

- A. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the contract prices, of the goods, work, or Services provided in the audited period, then you must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;
- B. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the contract prices, of the goods, work, or Services provided in the audited period, then you must reimburse the City for the full cost of the audit and of each subsequent audit.

If the City is unable to make a determination regarding overcharges to City as a result of your not having maintained records as required under this Agreement, you must promptly reimburse the City for some or all of the cost of the audit, as determined in the sole discretion of the City. Your failure to reimburse the City in accordance with this Section 3.3 is an event of default under this Agreement, and you will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

3.4 CONFIDENTIALITY

- A. All reports, deliverables and documents prepared, assembled or encountered by or provided to you under this Agreement are property of the City and are confidential, and you warrant and represent that, except as may be required by law, the reports, deliverables and documents will not be made available to any other individual or organization without the prior written consent of the Commissioner. You will implement measures to ensure that your staff and your subcontractors will be bound by this Section.
- B. You must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding your Services or the project to which the Services pertain without the prior written consent of the Commissioner.

If you are presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in your possession by reason of this Agreement, you must immediately give notice to the Commissioner and the City's Corporation Counsel with the understanding that the City will have the opportunity to contest such process by any means available to it, before such records or documents are submitted to a court or other third party. You will not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

- C. To the extent not defined herein, the capitalized terms below and in Exhibit G will have the same meaning as set forth in the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations ("HIPAA"). See 45 CFR parts 160, 162 and 164. You and all your Subcontractors must comply with HIPAA and all rules and regulations applicable to you or them. You must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16), the Illinois Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 through 17) and all other Illinois state statutes concerning the confidentiality, preservation, Use, and Disclosure of Protected Health Information and the rules and regulations promulgated under those state statutes. If you fail to comply with the applicable provisions under HIPAA and the Illinois state statutes, rules and regulations concerning the confidentiality, preservation, Use, and Disclosure of Protected Health Information, such failure will constitute an event of default under the Business Associate Agreement contained in Exhibit G for which no opportunity for cure will be provided. Additionally,

if you are a Business Associate you must comply with all requirements of HIPAA applicable to Business Associates including the provisions contained in Exhibit G. You shall maintain for a minimum of six (6) years all Protected Health Information.

- D. FEDERAL INFORMATION SECURITY MANAGEMENT ACT (FISMA): All information systems, electronic or hard copy which contain Federal data need to be protected from unauthorized access. This also applies to information associated with HHS grants. Congress and the OMB have instituted laws, policies and directives that govern the creation and implementation of federal information security practices that pertain specifically to grants and contracts. The current regulations are pursuant to the Federal Information Security Management Act (FISMA), Title III of the E-Government Act of 2002 Pub. L. No. 107-347.

3.5 MONITORING

You will allow the City:

- A. to have access at all times to all facilities supported under this Agreement whenever requested by appropriate staff members of the City;
- B. to have access at all times to all staff supported under this Agreement whenever requested;
- C. to make physical inspections of the premises you use in the performance of the Services and to require such physical safeguards to safeguard the property and/or equipment authorized including, but not limited to, requiring locks, alarms, safes, fire extinguishers and sprinkler systems; and
- D. to be present at any and all meetings held by you, including, but not limited to, staff meetings, board of directors meetings, advisory committee meetings and advisory board meetings, if an item relating to this Agreement is to be discussed.

You must make staff available on a regular basis at meetings convened by the Department, for the purpose of, but not limited to, making presentations, answering questions, and addressing issues related to the Services. Your chief executive officer, or his or her designee, will participate in all delegate agency conferences.

You must respond within 2 weeks to questionnaires, if any, regarding demographics, staff, quality, etc., from the City.

Nothing in this Agreement will be construed as restricting or otherwise limiting the rights of the City toward the appropriate management of this program.

3.6 INTELLECTUAL PROPERTY

A. Patents and Copyrights

The City reserves an exclusive, perpetual and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for City purposes, including, but not limited to, commercial exploitation:

- i. the copyright or patent in any work developed under this Agreement; and
- ii. any rights of copyright or patent to which you purchase ownership with the funds awarded pursuant to this Agreement.

If the federal government determines that a patent or copyright which is developed or purchased by you serves a federal government purpose, a royalty-free, non-exclusive and irrevocable license will vest in the federal government.

Any discovery or invention arising out of, or developed in conjunction with the Services will be promptly and fully reported to the federal government for a determination as to whether patent protection on such invention or discovery should be sought. The rights to such patent will be administered as set forth above and in 37 CFR Part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and implementing regulations.

B. Ownership of Documents

All required submittals, including but not limited to work products, materials, documents, and reports, if any, described in Exhibit B, will be the property of the City. During the performance of the Services, you will be responsible for any loss or damage to the documents while they are in your possession and any such document lost or damaged will be restored at your expense. If not restorable, you will be responsible for any loss suffered by the City on account of such destruction. Full access to all finished or unfinished documents, data, studies and reports to be prepared by you hereunder during the performance of Services will be available to the City during normal business hours upon reasonable notice.

C. Hold Harmless

Unless prohibited by state law, upon request by the Federal government, you will indemnify, save, and hold harmless the City and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by you of proprietary rights, patents, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any material or data produced under the Agreement.

3.7 TECHNICAL ASSISTANCE

You must attend technical assistance session(s) sponsored by the City during the term of this Agreement.

ARTICLE 4: COMPENSATION

4.1 BASIS OF PAYMENT

You will be compensated for Services performed and costs incurred and paid directly by you pursuant to the Budget Summary, which is attached to this Agreement as Exhibit A and incorporated by reference as if fully set forth herein. Requests for budget revisions which do not affect the Maximum Compensation or Committed Compensation must be submitted for review and approval to the Department no later than two calendar months before the end of the Term of the Agreement. For example, if the Term of the Agreement expires December 31, then requests for budget revisions, if any, must be submitted no later than the preceding October 31. If the Department approves and signs the request for budget revision, the Department will forward the request to the City Comptroller for final review, approval and processing.

4.2 METHOD OF PAYMENT

Using the City's web-based E-Vouchering system or as otherwise instructed by the City, you will submit **MONTHLY** requisitions for reimbursement (each, a "**Requisition**") identifying the payment due for the Services performed and/or costs incurred and paid directly by you in such detail and supported by such documents as required by the City.

You must submit Requisitions within 15 calendar days after the end of the month in which you performed Services and/or incurred and paid costs. The City will reject any Requisition that includes costs that were incurred or paid by any party other than you.

The following paragraph applies to any Requisition submitted before the expiration date or earlier termination of this Agreement: The City will use reasonable efforts to respond to your Requisition within 30 calendar days after submission by either (a) processing the payment or (b) notifying you (a "**Deficiency Notice**") of the way in which the Requisition is deficient and the adjustments you must make in order to receive payment. Within 15 calendar days after receiving a Deficiency Notice, and after completing such adjustment, you may resubmit a revised Requisition and the City thereafter will use reasonable efforts to respond to your revised Requisition within 30 calendar days by either (a) processing the payment or (b) sending you a Deficiency Notice.

The following paragraph applies to any Requisition submitted after the expiration date or earlier termination of this Agreement: The City will use reasonable efforts to respond to your Requisition within 30 calendar days after submission by either (a) processing the payment or (b) sending you a Deficiency Notice. Within 15 days after receiving a Deficiency Notice, and after completing such adjustment, you may resubmit a final revised Requisition.

You waive all rights to payment with respect to any Requisition submitted later than 15 calendar days after the expiration date or earlier termination of this Agreement. The City will not reimburse costs that you incur or pay, or Services you perform, after the expiration date or earlier termination of this Agreement. Further, the City reserves the right to salvage any funds not expended by you by the end of the term of this Agreement.

4.3 REDUCTION OF COMPENSATION

If, after this Agreement is signed, anticipated local, federal and/or state funding is reduced for any reason, or the City determines in its sole discretion that your performance is not satisfactory, then the City reserves the right upon written notice to you to reduce or modify the Maximum Compensation, the Committed Compensation, the time for performance and/or the number of unfilled participant slots. If local, federal and/or state appropriations are reduced to such an extent that, in the sole discretion of the City, no funds will be available to compensate you under this Agreement, then the City will provide you notice of such occurrence. The notice will constitute notice of early termination in accordance with this Agreement.

If the Maximum Compensation and/or Committed Compensation is reduced, you will have 30 calendar days from the date of the written notice to submit a revised work program, budget or any other necessary document ("**Revised Submittals**") to the City reflecting the reduction in Maximum Compensation and/or Committed Compensation, as applicable, and accordingly modifying the Services to be performed. The City will have the discretion to modify the Revised Submittals as it may deem appropriate in order to realize the goals of this Agreement. The Revised Submittals will be reviewed by the Department. After (a) final approval and signature by the Department of the Revised Submittals and (b) final review and approval by the City Comptroller of the revised budget included in the Revised Submittals, the Revised Submittals will become a part of this Agreement superseding the relevant previous documents. If you fail to comply with the written notice or submit Revised Submittals which are not accepted by the City, you must perform this Agreement as originally executed for the reduced Maximum Compensation or, if less, the reduced Committed Compensation.

4.4 ALLOWABLE COSTS

All costs allowed by the City Comptroller's Office, are not considered final and may be disallowed upon the completion of audits ordered or performed by the City or the appropriate federal or state agency. In the event of a disallowance, you will refund the amount disallowed to the City.

ARTICLE 5: NON-SOLICITATION

You warrant and represent that you have not employed any person solely for the purpose of soliciting or procuring this Agreement, and have not made, and will not make, any payment or any agreement for the payment of any commission, percentages brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.

ARTICLE 6: DISPUTES

Except as otherwise provided in this Agreement, you must and the City may bring any dispute arising under this Agreement which is not resolved by the parties to the Chief Procurement Officer for decision based upon the written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room, Chicago, Illinois 60602.) The Chief Procurement Officer will issue a written decision and send it to you by mail. The decision of the Chief Procurement Officer is final and binding. The sole and exclusive remedy to challenge the decision of the Chief Procurement Officer is judicial review by means of a common law writ of certiorari.

ARTICLE 7: EVENTS OF DEFAULT & REMEDIES

7.1 EVENTS OF DEFAULT DEFINED

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In addition to any others mentioned elsewhere in this Agreement, the following constitute events of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by you to the City.
- B. Any material failure by you to perform any of your obligations under this Agreement including, but not limited to, the following:
 - i. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;
 - ii. Failure to have and maintain all professional licenses required by law to perform the Services;
 - iii. Failure to timely perform the Services;
 - iv. Failure to perform the Services in a manner satisfactory to the City, or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - v. Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;
 - vi. Discontinuance of the Services for reasons or circumstances within your reasonable control;
 - vii. Failure to comply with any other material term or condition of this Agreement including, but not limited to, the provisions concerning insurance, compensation, reporting, monitoring, licensing and nondiscrimination;
 - viii. Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is no longer complete or accurate, including changes in ownership, and to provide the updated EDS(s) to the City as provided under Section 8.13, *Economic Disclosure Statement and Affidavit*; and
 - ix. Any other acts specifically stated in this Agreement as constituting an act or event of default.
- C. Your default under any other agreement you may presently have or may enter into with the City during the Term. You consent that in the event of a default under this Agreement, the City may also declare a default under any other agreements the City has with you.
- D. Your failure to comply with Section 8.5, *Compliance with all Laws*, in the performance of the Agreement.
- E. Your violations of City ordinance(s) unrelated to performance under the Agreement that in the opinion of the Commissioner indicate a willful or reckless disregard for City ordinances and regulations.
- F. Any action or failure to act by you that causes the City to be in violation of any agreements it has with Federal or State departments or agencies.
- G. Any change in ownership or control of you without the prior written approval of the Commissioner (when such prior approval is permissible by law), which approval the Commissioner will not unreasonably withhold.
- H. Your failure, or the failure by any party that is a Controlling Person (defined in Section 1-23-010 of the Municipal Code) with respect to you, to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code; such failure shall render this Agreement voidable or subject to termination, at the option of the Chief Procurement Officer. You agree that your failure to maintain eligibility (or failure by any Controlling Person with respect to you to maintain eligibility) to do business with the City in violation of Section 1-23-030 of the Municipal Code shall constitute an event of default.

7.2 REMEDIES

The occurrence of any event of default permits the City, at the City's sole option, to declare you in default. The City may in its sole discretion give you an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days unless extended by the City. Whether to declare you in default is within the sole discretion of the City and neither that decision nor the factual basis for it is subject to review or challenge, except to the extent that a statute or regulation applicable to the action involved entitles you to a hearing, appeal or other administrative proceeding.

The Commissioner will give you written notice of the default, either in the form of a cure notice ("**Cure Notice**"), or, if no opportunity to cure will be granted, a default notice ("**Default Notice**"). If the Commissioner gives a Default Notice, the Commissioner will also indicate any present intent the City may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the City decides not to terminate, this decision will not preclude the City from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Commissioner may give a Default Notice if, within the cure period given in a Cure Notice, in the sole opinion of the City, you fail to effect a cure or fail to commence and continue diligent efforts to cure the event of default. When a Default Notice with intent to terminate is given as provided in this Section 7.2, you must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in process, to the City.

Following or at the same time as the Default Notice, the City may invoke any or all of the following remedies:

- A. The right to take over and complete the Services or any part of them as agent for and at your cost, either directly or through others. You will have, in that event, the right to offset from the cost the amount it would have cost the City under the terms and conditions of this Agreement, had you completed the Services;
- B. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
- C. The right of specific performance, an injunction or any other appropriate equitable or legal remedy against you;
- D. The right to money damages;
- E. The right to withhold all or any part of your compensation;
- F. The right to deem you non-responsible in future contracts to be awarded by the City; and
- G. The right to declare default on any other contract or agreement you may have with the City.

If the City considers it to be in the City's best interests, it may elect not to declare default or to terminate the Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits you to continue to provide the Services despite one or more events of default, you will in no way be relieved of any of your responsibilities, duties or obligations under this Agreement nor will the City waive or relinquish any of its rights.

The remedies under the terms and conditions of the Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default will impair any such right or power nor will it be construed as a waiver of any event of default or acquiescence in it, and every such right and power may be exercised from time to time and as often as the City deems expedient.

7.3 RIGHT TO OFFSET

To the extent permitted by applicable law:

- A. In connection with performance under this Agreement, the City may offset any incremental costs and other damages the City incurs in any or all of the following circumstances:

- (i) if the City terminates this Agreement for default or any other reason resulting from your performance or non-performance;
- (ii) if the City exercises any of its remedies under Section 7.2, *Remedies*, of this Agreement; or
- (iii) if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these incremental costs and other damages by use of any payment due for Services completed before the City terminated this Agreement or before the City exercised any remedies. If the amount offset is insufficient to cover those incremental costs and other damages, you are liable for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

- B. As provided under Section 2-92-380 of the Municipal Code and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by you to the City, as those terms are defined in Section 2-92-380.
- C. Without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against you unrelated to this Agreement. When the City's claims against you are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse you to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

7.4 SUSPENSION OF SERVICES

The City may, at any time, request that you suspend the Services, or any part of them, (a) by giving 15 calendar days prior written notice to you, (b) upon no notice in the event of emergency, or (c) upon no notice if the City determines that immediate suspension is necessary because of a serious risk of: (i) substantial injury to property or loss of project funds; or (ii) violation of a Federal, State, or local criminal statute; or (iii) if staff or participants' health and safety are at risk. No costs incurred after the effective date of the suspension will be allowed. You will promptly resume your performance of the Services under the same terms and conditions upon written notice by the City and such equitable extension of time as may be mutually agreed upon by the City and you when necessary for continuation or completion of the Services. Any additional costs or expenses you actually incur as a result of recommencing the Services will be treated in accordance with the compensation provisions under Article 4, *Compensation*, of this Agreement.

No suspension will, in the aggregate, exceed a period of 45 calendar days within any one contract year unless the City has declared a summary suspension and the conditions creating the summary suspension have not been corrected. If the total number of days of suspension exceeds 45 calendar days, you, by written notice to the City, may treat the suspension as an early termination of this Agreement by the City under Section 1.3, *Early Termination*.

7.5 NO DAMAGES FOR DELAY

Neither you nor your agents, employees, and subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by you by reason of delays or hindrances in the performance of the Services, whether or not caused by the City. On notice to the City of a delay outside your control, you may request additional time to complete your performance. The decision to grant additional time is in the sole and absolute discretion of the City.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1 WARRANTIES AND REPRESENTATIONS

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You acknowledge, represent, warrant and covenant, as of the date of this Agreement and throughout the Term, that:

- A. you are appropriately licensed and/or certified under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license and/or certification is required by law and for which you are not appropriately licensed and/or certified;
- B. no officer, agent or employee of the City is employed by you or has a financial interest directly or indirectly in this Agreement or the compensation to be paid, except as may be permitted in writing by the City's Board of Ethics; that no payment, gratuity or offer of employment will be made by or on behalf of any subcontractors of any tier, as an inducement for the award of a subcontract or order; you acknowledge that any agreement entered into, negotiated or performed in violation of any of the provisions of City's Ethics Ordinance, Municipal Code § 2-156 et seq., is voidable by the City; in accordance with 41 U.S.C. § 22, you must not admit any member of or delegate to the United States Congress to any share or part of the Services or the Agreement, or any benefit derived therefrom; and
- C. you are financially solvent; you and each of your employees, agents and subcontractors of any tier are competent to perform the Services required under this Agreement; and you are legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;
- D. you will not knowingly use the services of any ineligible contractor or subcontractor for any purpose in the performance of the Services under this Agreement;
- E. you and your subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City of Chicago;
- F. you have carefully examined and analyzed the provisions and requirements of this Agreement; you understand the nature of the Services required; from your own analysis you have satisfied yourself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and you warrant that you can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;
- G. you and, to the best of your knowledge, your subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code, the Illinois Criminal Code, 720 ILCS 5/33E-1, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;
- H. you and your subcontractors understand and will abide by all provisions of Chapter 2-26-010 et seq. of the Municipal Code;
- I. any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 1.3, *Early Termination*, and 7.1, *Events of Default Defined*, of this Agreement;
- J. any violation of Chapter 1-21 of the Municipal Code, False Statements, is also cause for termination under Sections 1.3 and 7.1 of this Agreement;
- K. neither you nor any Affiliate is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. "Affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by

that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise; and

- L. you are current as to the filing and payment of any Governmental Charges (as defined in Section 8.5, *Compliance with all Laws*) and/or related returns and you are not delinquent in your payment of Governmental Charges.

8.2 INSPECTOR GENERAL

It is your duty and the duty of any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all of your officers, directors, agents, partners, and employees and any such bidder, proposer, contractor, subcontractor or such applicant, to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. You represent that you understand and will abide by all provisions of Chapter 2-56 of the Municipal Code and that you will inform subcontractors of this provision and require their compliance.

The HHS Office Inspector General (OIG) maintains a toll free number (1-800-HHS-TIPS [1-800-447-8477]) for receiving information concerning fraud, waste or abuse under grants and cooperative agreements. Information also may be submitted by e-mail to hhstips@oig.hhs.gov or by mail to Office of the Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington DC 20201. Such reports are treated as sensitive material and submitters may decline to give their names if they choose to remain anonymous.

8.3 WHOLE AGREEMENT-INTEGRATION

This Agreement, including attached Exhibits A through G, constitutes the entire agreement between the parties, and no warranties, representations, inducements, considerations, promises or other inferences will be implied that are not expressly stated in the Agreement. Except as described in Section 8.4(A), *Modifications and Amendments*, no variation or amendment of this Agreement and no waiver of its provisions are valid unless in writing and signed by your duly authorized officers and those of the City. This Agreement supersedes all oral or written agreements or understandings on the subject of this Agreement between you and the City.

8.4 MODIFICATIONS AND AMENDMENTS

(A) This Agreement is subject to such modifications as the City determines may be required by changes in Federal, State or local law or regulations applicable to this Agreement, including without limitation as described in Section 9(B). Any such required modification shall be incorporated into and become part of this Agreement as if fully set forth herein.

(B) Except as described in Section 8.4(A), no changes, amendments, modifications, cancellations or discharges of this Agreement, or any part of it are effective unless in writing and signed by you and the City, or their respective successors and assigns.

8.5 COMPLIANCE WITH ALL LAWS

(A) You must observe and comply with all applicable laws, ordinances, rules, executive orders and regulations of the federal, state, local and city government, which may in any manner affect the performance of this Agreement, all of which will be deemed to be included in this Agreement the same as though written herein in full. You are responsible for ensuring compliance with all applicable laws, rules and regulations, including but not limited to those specifically referenced herein, and for paying when due all Governmental Charges and obtaining all required licenses, certificates and other authorizations. Except where expressly required by applicable laws and regulations, the City shall not be responsible for monitoring your compliance. Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(B) You have the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of any program facility. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending your covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless you have given prior written notice to the City of your intent to contest or object to a Governmental Charge and, unless, at the City's sole option, (i) you shall demonstrate to the City's satisfaction that legal proceedings instituted by you contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the program facility to satisfy such Governmental Charge prior to final determination of such proceedings; and/or (ii) you shall furnish a good and sufficient bond or other security satisfactory to the City in such form and amounts as the City shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the program facility during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest. "**Governmental Charge**" shall mean all Federal, State, county, City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to you, your operations, the program facility or the Services.

(C) If you are delinquent in filing and/or paying any Governmental Charges and/or related returns, the City in its sole discretion may continue to reimburse you for Services provided under this Agreement only if you (i) have entered into an installment payment agreement with the applicable authority, (ii) have delivered to the City a copy of such fully-signed installment payment agreement and (iii) remain in good standing therewith. You may not use funds you receive under this Agreement to discharge outstanding Governmental Charges.

8.6 COMPLIANCE WITH ACCESSIBILITY LAWS

You will comply with all accessibility standards for persons with disabilities or environmentally limited persons including, but not limited to: the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; and the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794. In the event the above cited standards are inconsistent, you will comply with the standard providing greater accessibility.

8.7 NO FEDERAL, STATE OR CITY OBLIGATIONS TO THIRD PARTIES

You acknowledge that, absent the express written consent of the federal government and the State of Illinois, the State of Illinois and the federal government will not be subject to any obligations or liabilities to any person not a party to the grant agreement between the City and the State of Illinois or between the City and the federal government. Notwithstanding any concurrence provided by the State of Illinois or federal government in or approval of any solicitation, agreement, or contract, the State of Illinois and federal government continue to have no obligations or liabilities to any party, including you.

This Agreement is made for the sole benefit of the City and you and the respective successors and assigns of the City and you and no other party shall have any legal interest of any kind hereunder or by reason of this Agreement. Whether or not the City elects to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third party by reason of this Agreement or any of the City's actions or omissions pursuant hereto or otherwise in connection herewith.

8.8 NON-LIABILITY OF PUBLIC OFFICIALS

Neither you, your assignees, nor your subcontractors are permitted to charge personally any official, employee or agent of the City with any liability or expenses of defense or be held personally liable to you under any term or condition of this Agreement, because of the City's execution or attempted execution of this Agreement, or because of its breach.

8.9 INDEPENDENT CONTRACTOR

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(a) This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between the parties, and the rights, and the obligations of the parties will be only those expressly set forth in this Agreement. You will perform under this Agreement as an independent contractor to the City and not as a representative, employee, agent, or partner of the City.

(b) The City is subject to the June 24, 2011 "City of Chicago Hiring Plan" (the "**2011 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2011 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(c) You are aware that City policy prohibits City employees from directing any individual to apply for a position with you, either as an employee or as a subcontractor, and from directing you to hire an individual as an employee or as a subcontractor. Accordingly, you must follow your own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by you under this Agreement are employees or subcontractors of you, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by you.

(d) You will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(e) In the event of any communication to you by a City employee or City official in violation of paragraph (c) above, or advocating a violation of paragraph (d) above, you will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("**IGO Hiring Oversight**"), and also to the head of the Department. You will also cooperate with any inquiries by IGO Hiring Oversight related to this Agreement.

8.10 INTERNATIONAL ANTI-BOYCOTT

You certify that neither you nor any substantially owned affiliated company of yours is participating or will participate in an international boycott, as defined by the provisions of the U.S. Export Administration Act of 1979 or its enabling regulations.

8.11 JOINT AND SEVERAL LIABILITY

If you, or your successors or assigns, are comprised of more than one person, then every obligation or undertaking to be fulfilled or performed by you will be the joint and several obligation or undertaking of each such person.

8.12 PROOF OF BUSINESS FORM

Upon request from the City, you will provide copies of your latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable, and evidence of your authority to do business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Secretary of State of Illinois.

8.13 ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT

You will use the City's online submission process to provide the City with a correctly completed Economic Disclosure Statement and Affidavit ("**EDS**"), which is incorporated by reference, and further will provide any other affidavits or certifications as may be required by federal, state or local law in the award of public contracts, all of which affidavits or certifications are incorporated by reference. You will cause your

subcontractors or, if a partnership or joint venture, all members of the partnership or joint venture, to submit all required affidavits to the City. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. You and any other parties required by this Section 8.13 to complete an EDS must promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, including changes in ownership and changes in disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, and failure to promptly provide the updated EDS(s) to the City will constitute an event of default under this Agreement.

You certify, as further evidenced in the EDS, by your acceptance of this Agreement that neither you nor your principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. You further agree by executing this Agreement that you will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If you or any lower tier participant is unable to certify to this statement, you must attach an explanation to the Agreement.

To the best of your knowledge and belief, you, your principals and key project personnel: (a) are not presently declared ineligible or voluntarily excluded from contracting with any Federal or State department or agency; (b) have not within a three-year period preceding this Agreement been convicted of any felony; been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; had a civil judgment rendered against them for commission of fraud; been found in violation of Federal or State antitrust statutes; or been convicted of embezzlement, theft, larceny, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property; and (c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in subparagraph (b) of this certification. Any request for an exception to the provisions of this paragraph must be made in writing, listing the name of the individual, home address, type of conviction and date of conviction.

8.14 CONFLICT OF INTEREST

No member of the governing body of the City or other units of government and no other officer, employee, or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services will have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee will be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

You covenant that you, your officers, directors and employees, and the officers, directors and employees of each of your members if a joint venture, and your subcontractors, presently have no interest and will acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services. You further covenant that no person having any such interest will be employed. You acknowledge that if the City determines that any of your services for others conflict with the Services, you will terminate such other services immediately upon request of the City.

In addition to the conflict of interest requirements in the OMB Super Circular and 46 CFR 92.36(b)(3) and 45 CFR 75.327(c), as applicable, no person who is an employee, agent, officer, or elected or appointed official of the City and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement or their proceeds, either for himself or herself or for those whom he or she has family or business ties, during his or her tenure or for one year thereafter.

Furthermore you warrant and represent that you are and will remain in compliance with federal restrictions on lobbying set forth in the Byrd Anti-Lobbying Amendments (31 U.S.C. § 1352), and in 45 CFR 93.

In addition, if State of Illinois funds are used for the Agreement, you must comply with the conflict of interest provisions contained in the Illinois Procurement Code (30 ILCS 500/50-13) and other provisions in the Illinois Procurement Code regarding participation in agreement negotiation by a State employee (30 ILCS 500/50-15).

You shall establish safeguards to prohibit officers, directors, agents, employees and family members from using positions of employment for a purpose that is, or gives the appearance of, being motivated by a desire for a private gain for themselves or others, particularly those with whom they have family business or other ties. Safeguards, evidenced by rules or bylaws, shall be established to prohibit persons from engaging in actions, which create or which appear to create a conflict of interest as described herein.

8.15 COOPERATION WITH CITY

You will cooperate fully with the City and act in the City's best interests. You agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as the City in its sole discretion deems necessary or appropriate to carry out the terms, provisions and intent of this Agreement. By way of example and without limitation, within 15 calendar days after the request of the City, you shall execute and deliver, and you shall not revoke, any tax information authorization or similar form authorizing the City to inspect and/or receive your confidential information from any applicable tax authority.

If this Agreement is terminated for any reason, or if it is to expire on its own terms and conditions, you will make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of your own operations in connection with the Services, uninterrupted provision of Services during any transition period and will comply with the reasonable requests and requirements of the City in connection with the termination or expiration of this Agreement.

8.16 WAIVER

Nothing in this Agreement authorizes the waiver of any requirement or condition contrary to law or ordinance or which would result in or promote the violation of any federal, state or local law or ordinance.

Whenever the City, by a proper authority, waives your performance in any respect or waives a requirement or condition to either the City's or your performance, the waiver so granted, whether express or implied, will only apply to the particular instance and will not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No waiver will be construed as a modification of the Agreement regardless of the number of times the City may have waived the performance, requirement or condition.

8.17 GOVERNING LAW

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

8.18 SEVERABILITY

If any provision of the Agreement is held to be or in fact is illegal, inoperative or unenforceable on its face or as applied in any particular case, in any jurisdiction (or in all cases because it conflicts with any other provision of this Agreement, or any constitution, statute, municipal ordinance, rule of law or public policy, or for any other reason), that circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision of this Agreement illegal, invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement does not affect the remaining portions of this Agreement or any part of it.

8.19 INTERPRETATION

Any headings in this Agreement are for convenience of reference only and do not define or limit its provisions. Words importing the singular number include the plural number and vice versa, unless the context otherwise indicates. All references to any exhibit, appendix or document include all supplements and/or amendments to any such exhibits, appendixes or documents entered into in accordance with the terms and conditions of this Agreement. All references to any person or entity include any person or entity succeeding to the rights, duties, and obligations of the person or entity in accordance with the terms and conditions of this Agreement. In the event of any conflict between this Agreement and any exhibits to it, the terms and conditions in the body of this Agreement control.

8.20 NONASSIGNABILITY

You will not assign all or any part of your work or responsibilities under this Agreement without the prior written consent of the City; but any such consent will not relieve you of your obligations under this Agreement. Any transfer or assignment without the prior written consent of the City constitutes an event of default under this Agreement and is void as to the City. The City reserves the right to assign, in whole or in part, any funds, claims or interests, due or to become due, under this Agreement.

8.21 YOUR AUTHORITY

Your execution of this Agreement is authorized by a resolution or ordinance of your governing body. The signature of the individual signing on your behalf has been made with complete and full authority to commit you to all the terms and conditions of this Agreement. Evidence of signature authority should be forwarded to the City with the executed Agreement.

8.22 DEEMED INCLUSION

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

8.23 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. This Agreement may be delivered by the exchange of signed signature pages, by facsimile transmission, by e-mail with a pdf copy or other replicating image attached, or by uploading to the City's web-based contracting portal if you are a registered user of such portal, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

ARTICLE 9: NOTICES

- A. Except as provided in Article 9(B), all notices and communications to be provided by you and/or by the City under this Agreement must be in writing and may be delivered personally, by overnight courier or by First Class certified mail, return receipt requested, with postage prepaid and addressed as follows:

If to the City: The Department's mailing address noted on the cover page to this Agreement, with copies to: Department of Law, City Hall, Room 600, 121 North LaSalle Street, Chicago, Illinois 60602, Attention: Corporation Counsel

If to Subrecipient: Your mailing address noted on the cover page to this Agreement.

Notices and communications delivered by mail are deemed received 3 business days after mailing in accordance with this Article 9. Communications delivered personally are deemed effective upon receipt. Those sent via overnight courier are deemed effective on the next business day. Refusal of delivery has the same effect as delivery.

- B. From time to time the City may notify you of (a) data elements related to the Grant, pursuant to 2 CFR Part 200.331, *Requirements for pass-through entities*, and/or (b) other information including,

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without limitation, the email address and/or website location to which you must submit certificates of insurance. The City may deliver such notices to you to the business email address listed on the cover page to this Agreement, or such other email address of which you have notified the Department under Article 15, *Internet Access and Email Address*. Such notices shall be deemed received upon transmission by the City and the information in such notices shall be incorporated into and become part of this Agreement as if fully set forth herein.

- C. You must notify the City of any significant change in your organizational structure. Significant changes include, but are not limited to, changes in:
- i. the official(s) to whom notice regarding the Agreement is provided and their mailing address;
 - ii. the officers of the corporation, including president, chairman, vice president, treasurer, secretary; and
 - iii. your key staff and/or your program sites, including executive director, site director, fiscal director; name, ownership, Federal employer identification number (FEIN), DUNS number or taxpayer certification; legal status (including not-for-profit status); and site address or agency official address or telephone numbers.

Such communication must be directed within 10 calendar days of such occurrence (or, in the case of changes in legal status (including not-for-profit status), address, DUNS number, name, ownership, FEIN or taxpayer certification, 45 days in advance), to the Department's Mailing Address noted on the cover page of this Agreement.

No promise or undertaking made in this Agreement is an assurance that the City agrees to continue this Agreement should you reorganize, change owners, or otherwise substantially change the character of your corporate or other business structure.

ARTICLE 10: BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS

Under Section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code.

Section 2-156-080 defines a "**business relationship**" as any contractual or other private business dealing of an official, or his or her spouse or domestic partner, or of any entity in which an official or his or her spouse or domestic partner has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse or domestic partner with an entity when such spouse or domestic partner has no discretion concerning or input relating to the relationship between that entity and the City.

ARTICLE 11: LIVING WAGE ORDINANCE

- A. **Not-for-Profit Corporations:** If you are a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and are recognized under Illinois not-for-profit law, then the provisions of Sections B through F below do not apply.
- B. Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("**Covered Employees**").
- C. Accordingly, except to the extent Executive Order 2014-1, the Chicago Minimum Wage Ordinance (chapter 1-24 of the Municipal Code), the Prevailing Wage Act (820 ILCS 130), or other applicable law requires a higher wage pursuant to Section 2-92-610 and regulations promulgated under it:
- i. If you have 25 or more full-time employees, and
 - ii. If at any time during the performance of this Agreement, you and/or any subcontractor or any other entity that provides any portion of the Services (collectively "**Performing Parties**") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then
 - iii. You must pay your Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "**Base Wage**") for all Services performed under this Agreement.
- D. Your obligation to pay, and to assure payment of, the Base Wage will begin at any time during the Term when the conditions set forth in C.i. and C.ii. above are met, and will continue until the end of the Term.
- E. As of July 1, 2017, the Base Wage became \$12.30 per hour, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. At all times during the Term, you and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then you and all other Performing Parties must pay the prevailing wage rates.
- F. You must include provisions in all subcontracts requiring your subcontractors to pay the Base Wage to Covered Employees. You must provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by you or by a subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit you and/or subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

ARTICLE 12: NOTICE OF CHANGE IN CIRCUMSTANCES

If you, your parent or related corporate entity, becomes a party to any litigation, investigation or transaction that may reasonably be considered to have a material impact on your ability to perform under this Agreement, you must immediately notify the City in writing. You must also notify the Department regarding incidents that significantly impact the health and safety of clients or incidents that could result in the interruption of service. You must follow procedures provided by the Department for reporting incidents.

You certify that you are not currently operating under or subject to any cease and desist order, or subject to any informal or formal regulatory action, and, to the best of your knowledge, that you are not currently

the subject of any investigation by any state or federal regulatory, law enforcement or legal authority. Should you become the subject of an investigation by any state or federal regulatory, law enforcement or legal authority, you shall promptly notify the City of any such investigation. You acknowledge that should you later be subject to a cease and desist order or Memorandum of Understanding, or found in violation pursuant to any regulatory action or any court action or proceeding before any administrative agency, that the City is authorized to declare you in default of this Agreement and suspend or terminate this Agreement.

ARTICLE 13: PROHIBITION ON CERTAIN CONTRIBUTIONS MAYORAL EXECUTIVE ORDER No. 2011-4

Neither you nor any person or entity who directly or indirectly has an ownership or beneficial interest in you of more than 7.5% ("**Owners**"), spouses and domestic partners of such Owners, your Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("**Sub-owners**") and spouses and domestic partners of such Sub-owners (you and all the other preceding classes of persons and entities are together, the "**Identified Parties**"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "**Mayor**") or to his political fundraising committee during (i) the bid or other solicitation process for this Agreement or Other Contract, including while this Agreement or Other Contract is executory, (ii) the term of this Agreement or any Other Contract between City and you, and/or (iii) any period in which an extension of this Agreement or Other Contract with the City is being sought or negotiated.

You represent and warrant that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached you or the date you approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

You shall not: (a) coerce, compel or intimidate your employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse your employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If you violate this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Commissioner may reject your bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between you and the City that is (i) formed under the authority of Municipal Code Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a "political contribution" as defined in Municipal Code Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in Municipal Code Ch. 2-156, as amended.

ARTICLE 14: COMPLIANCE WITH ENVIRONMENTAL AND SAFETY LAWS

You shall be subject to, obey and adhere to any and all federal, state and local laws, statutes, ordinances, codes, rules, regulations and executive orders relating to public health and safety and the environment as are now or may be in effect during the term of this Agreement which may be applicable to you, including but not limited to the following Sections of the Municipal Code of Chicago: Section 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560, whether or not in the performance of this Agreement.

ARTICLE 15: INTERNET ACCESS AND EMAIL ADDRESS

You must have Internet access at the site level. Internet access may be either dial-up or high speed/DSL. You must maintain at a minimum, one business email address listed on the cover page to this Agreement that will be the primary receiving point for all email correspondence from the Department. You may list additional addresses when you sign this Agreement. The additional addresses may be for a specific department/division of yours or for specific employees. You must notify the Department of any email address changes within five business days before the effective date of the change. You may use the City's web-based contracting portal to update your email address if you are a registered user of such portal.

ARTICLE 16: EXCLUDED PROVIDER WARRANTY AND INDEMNITY

You hereby represent and warrant that you and your employees and agents are not now and at no time have been excluded from participation in any federally funded health care program, including Medicare and Medicaid. This is an ongoing obligation of yours to ensure that you are not employing or contracting with individuals that have been sanctioned by the U.S. Department of Health and Human Services Office of Inspector General ("OIG") or barred from federal procurement programs. You shall check the OIG's cumulative sanctions reports and General Series Administration website on a monthly basis. You hereby agree to immediately notify the City of any threatened, proposed, or actual exclusion from any such program of yours or any such program of any of your employees or agents. In the event that you or any of your employees or agents performing services hereunder are excluded from participation in any federally funded health care program during the term of this Agreement, or at any time after the effective date of this Agreement, you shall be deemed to be in breach of this section and this agreement shall, as of the effective date of such exclusion or breach, automatically terminate. You shall indemnify and hold harmless the City against all actions, claims, demands and liabilities, and against all loss, damage, and costs and expenses, including reasonable attorney's fees, arising directly or indirectly, out of any violation of this section or due to the exclusion of you or any of your employees and agents from a federally funded health care program, including Medicare or Medicaid.

Exhibit E

Delegate Agency Grant Agreement
Enhanced Gonorrhea Surveillance Activities /
Safety Net Sexually Transmitted Disease Clinical Preventive Services

ADDITIONAL AGREEMENT PROVISIONS

E-1.1 CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Subrecipient certifies that, in accordance with the Pro-Children Act of 1994 (the "Act")(Pub. L. 103-227), smoking must not be permitted in any portion of any indoor facility owned or leased or contracted for by Subrecipient and used routinely or regularly for the provision of health, day care, early childhood development services, education, or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The Act also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with federal funds. The Act does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable federal funds is Medicare or Medicaid or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the Act may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity. Subrecipient must require the language contained in this Section to be included in any subawards which contain provision for children's services, and that all subrecipients must certify accordingly.

E-1.2 CERTIFICATION AND RESTRICTIONS ON LOBBYING

- A.** You acknowledge that receipt of funds under this Agreement may require compliance with Section 319 of Public Law 101-121(31 U.S.C.A. 1352) regarding the certification and disclosure of lobbying activities with the Federal Government and agree to comply with those provisions, and all federal rules promulgated by HHS, the funding source for implementation of programs operated under this Agreement; and will require that this assurance of compliance is part of any subcontracts executed hereunder.

Subrecipient certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. In addition, no part of federal appropriated funds will be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State or local legislature, except in presentation to the Congress or any State or local legislature itself. No part of the federal appropriated funds will be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State or local legislature.

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3. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," in accordance with its instructions.
4. Subrecipient must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- B. This Agreement is subject to the restrictions on lobbying found in 45 CFR Part 93 and Section 503 of Public Law 105-78. Section 503 provides, in part:
 1. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself or any State legislature.
 2. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agency acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

**E-1.3 COMPLIANCE WITH GRANT REGULATIONS
Standard Form 424B (Rev. 7-97)**

Subrecipient must comply with all applicable provisions of the Grant and must not cause the City to not be compliant with the Grant. Subrecipient must comply with, and certify that Subrecipient is in compliance with, all applicable laws (including implementing regulations), ordinances, policies, guidelines, procedures, regulations, rules, requirements and executive orders of the City of Chicago, the State of Illinois and all political subdivisions thereof, the federal government and HHS in the performance of this Agreement including, but not limited to, the following, in each case as amended from time to time:

- A. Public Health Service Act, Section 318 (42 U.S. Code § 247c), Public Law 100-202, Public Law 100-202 and implementing regulations promulgated thereunder; and the Funding Opportunity Announcement Number (FOA) Funding Opportunity Announcement number PS14-1402, entitled "Improving Sexually Transmitted Disease Programs through Assessment, Assurance, Policy Development, and Prevention Strategies (STD AAPPs)."
- B. The Uniform Administrative Requirements contained in 45 CFR Parts 75. 45 CFR Part 16 - ("Procedures of the Departmental Grant Appeals Board"); 45 CFR Part 75 ("Informal grant appeals procedures"), 45 CFR Part 81 ("Practice and procedure for hearings under Part 80 of Title 45"), 45 CFR 92 ("Administration of Grants"), 45 CFR Part 30 ("Claims Collection"), 45 CFR Part 100 ("Intergovernmental Review of DHHS Programs and Activities") and Grants and Agreements (2 CFR), including without limitation Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awardees (2 CFR 200). To the extent applicable

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in this Agreement, Subrecipient must comply with 45 CFR Part 46 (entitled "Protection of Human Subjects"). PHS Grants Policy Statement, DHHS Publication No. (OASH) 94-50,000, (Rev.) April 1, 1994; Application Instructions and Information and Program Guidance established by CDC for HIV/AIDS cooperative agreements.

- C. The Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763).
- D. All federal statutes relating to nondiscrimination, including, but not limited to:
 - 1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) which prohibits discrimination on the basis of race, color or national origin;
 - 2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683, 1685-1686) which prohibits discrimination on the basis of sex;
 - 3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps;
 - 4. Age Discrimination in Employment Act of 1967 and The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age;
 - 5. The Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255) relating to nondiscrimination on the basis of drug abuse;
 - 6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - 7. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3) relating to confidentiality of alcohol and drug abuse patient records;
 - 8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.) relating to nondiscrimination in the sale, rental or financing of housing;
 - 9. The Civil Rights Restoration Act of 1987;
 - 10. Executive Order 12250;
 - 11. Federal Equal Pay Act of 1963;
 - 12. Civil Rights Act of 1991; and
 - 13. Executive Order 11063, as amended by Executive Order 12259; and
 - 14. Section 188 of the Workforce Investment Act of 1998 (20 U.S.C. 9201), and any other applicable nondiscrimination statutes.
- E. All environmental standards including, but not limited to, those standards which may be prescribed by:
 - 1. National Environmental Policy Act of 1969 (Pub. L. 91-190) and Executive Order 11514
 - 2. Notification of violating facilities pursuant to Executive Order 11738;
 - 3. Protection of wetland pursuant to Executive Order 11990;
 - 4. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
 - 5. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - 6. Conformity with the approved State Implementation Plan developed pursuant to Section 176(c) of the Clean Air Act of 1955 (42 U.S.C. § 7401 et seq.); and
 - 7. The protection of underground sources of drinking water under the Safe Drinking Water Act of 1974 (Pub. L. 93-523).
 - 8. The protection of endangered species under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.; and
 - 9. Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234).
- F. The National Historic Preservation Act of 1966 (16 U.S.C. § 470), Executive Order 11593 and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.).
- G. An Act to Amend the Public Health Service Act to Establish a Program of National Research Service Awards to Assure to Continued Excellence of Biomedical and Behavioral Research and to Provide for the Protection of Human Subjects Involved in Biomedical and Behavioral Research and for Other Purposes (Pub. L. 93-348).

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- H. The Laboratory Animal Welfare Act of 1966 (7 U.S.C. §§ 2131 et seq.).
 - I. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.); the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub.L. 101-550; 42 U.S.C. 4851 et seq.) and implementing regulations at 24 CFR Part 35.
 - J. The Single Audit Act of 1984 and the Single Audit Act Amendments of 1996.
 - K. The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.) (in accordance therewith, the authorized official signing on your behalf certifies that the statements in this Agreement are true, complete and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious or fraudulent statements or claims may subject him or her to criminal, civil or administrative penalties, and agrees that you will comply with the terms and conditions with respect to the Grant).
 - L. Subrecipient must comply with the applicable provisions of the OMB Super Circular, as amended, succeeded or revised.
 - M. The Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
 - N. To the extent applicable in this Agreement, The Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.), the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333) and Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), and implementing regulations at 49 CFR 24.
 - O. The Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a-7b(b))
 - P. Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug- Free Workplace (Grants)(24 CFR 24 and Executive Orders 12549 and 12689)
 - Q. Pursuant to the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104 et seq.), you and or your employees and subcontractor may not, under this Agreement, (a) engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect; (b) procure a commercial sex act during the period of time that this Agreement is in effect; or (c) use forced labor in the performance of this Agreement. HHS or the City may terminate this Agreement without penalty, if you or any employee or subcontractor (i) engage in severe forms of trafficking in persons or have procured a commercial sex act during the period of time that this Agreement is in effect, or (ii) use forced labor in the performance of this Agreement.
 - R. Blocking access to pornography (Div. H, Title V, Sec. 528): (a) None of the funds made available under this Agreement may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography; (b) Nothing in subsection (a) shall limit the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.
- E-1.4** To the greatest extent practicable, all equipment and products purchased with funds received from the City pursuant to this Agreement should be American-made.
- E-1.5** The mandatory standards and policies relating to energy efficiency which are contained in the State of Illinois energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- E-1.6** None of the Federal funds provided under this Agreement shall be used to carry out any program for distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- E-1.7** None of the Grant funds can be used to pay the salary of an individual at a rate in excess of the Federal Executive Level II, which is currently \$183,300 annually.
- E-1.8** Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sept. 2013)

- (a) This Agreement and employees working on this Agreement will be subject to the whistle blower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L 112-239) and Federal Acquisition Regulation 3.908.
- (b) You shall inform your employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
- (c) You shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

E-1.9 PREVAILING WAGE

You agree to comply and assure compliance with the requirements of 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276 a(7), and implementing U.S. DOL regulation, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR Part 5. In addition to other requirements that may apply, you agree to pay wages to laborers and mechanics performing contract work at a rate not less than the minimum wages specified in a wage determination issued by the U.S. Secretary of Labor and not less frequently than once a week. You agree to place a copy of the current prevailing wage determination issued by the U.S. DOL in each solicitation for subcontractor work under this Agreement, and agree to refrain from awarding any affected subcontract until the subcontractor agrees to the required wage determination. You further agree to report to DOL every suspected or reported violation of the Davis-Bacon Act or its Federal implementing regulations.

E-1.10 DRUG FREE WORKPLACE

Subrecipient will provide a drug free workplace by provision and enforcement of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, including cannabis, is prohibited in Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- b. Establishing an ongoing drug free awareness program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. The Subrecipient's policy of maintaining a drug free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c. Providing a copy of the statement required by paragraph (a) to each employee engaged in the performance of the contract and posting a copy of the statement in a prominent place in the workplace.
- d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement, and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five calendar days after such conviction.
- e. Notifying the Department in writing within ten calendar days after receiving notice under sub-paragraph d(2) from an employee or otherwise receiving actual notice of such conviction.

- f. Taking one of the following actions, within thirty calendar days of receiving notice under sub-paragraph d(2), with respect to any employee who is convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement and/or other appropriate agency and as required by Section 5 of the Drugfree Workplace Act (30 ILCS 580/5).
- g. Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f) and implementation of the Drugfree Workplace Act (30 ILCS 580/5).

E-1.11 ACKNOWLEDGMENT; REVIEW OF MATERIALS: LOGOS

HIV PROGRAM REVIEW PANEL REQUIREMENT: All written materials, audiovisual materials, pictorials, questionnaires, survey instruments, websites, educational curricula and other relevant program materials have to be reviewed and approved by an established program review panel. A list of reviewed materials and approval dates must be submitted to the CDC Grants Management Specialist.

In accordance with Section 2.13, *Acknowledgement of Funding Sources*, all publication material, including but not limited to, publications, journal articles and pamphlets, must bear an acknowledgment and disclaimer, as appropriate, such as: "This publication (journal article, etc.) was supported by the Grant or Cooperative Agreement Number, 6 NH25PS004341-04-06, funded by the Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention or the Department of Health and Human Services."

Where a conference or publication is funded under this Agreement, you must include the following statement on conference materials or publication including promotional materials, agenda and Internet sites: "Funding for this conference was made possible (in part) by the Centers for Disease Control and Prevention. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government."

Logos. Neither the HHS nor the CDC logo may be displayed if such display would cause confusion as to the conference source or give false appearance of Government endorsement. Use of the HHS name or logo is governed by U.S.C. 1320b-10, which prohibits misuse of the HHS name and emblem in written communication. A non-federal entity is unauthorized to use the HHS name or logo governed by U.S.C. 1320b-10. The appropriate use of the HHS logo is subject to review and approval of the Office of the Assistant Secretary for Public Affairs (OASPA). Moreover, the Office of the Inspector General has authority to impose civil monetary penalties for violations (42 C.F.R. Part 1003). Neither the HHS nor the CDC logo can be used on conference materials, under a grant, cooperative agreement and contract or co-sponsorship agreement without the expressed, written consent of either the CDC Project Officer or the CDC Grants Management Officer. It is the responsibility of the grantee (or recipient of funds under a cooperative agreement) to request consent for use of the logo in sufficient detail to ensure a complete depiction and disclosure of all uses of the Government logos. In all cases for utilization of Government logos, the grantee must ensure written consent is received from the Project Officer and/or the Grants Management Officer.

E-1.12 Gun Control Prohibition (Div. G, Title II, Sec. 217): None of the funds made available under this Agreement may be used, in whole or in part, to advocate or promote gun control.

E-1.13 Clinical Laboratory Improvements Amendments (CLIA) program

For projects involving rapid HIV testing, you must comply with requirements under the Clinical Laboratory Improvements Amendments (CLIA) program, administered by the Centers for Medicare and Medicaid Services (CMS), and any relevant state and local regulations applicable to rapid HIV testing at the venues proposed for projects involving HIV rapid testing.

E-1.14 ADDITIONAL CONFIDENTIALITY REQUIREMENTS

Subgrantee must maintain the strict confidentiality of all information and records relating to known or suspected cases of HIV/AIDS infection in accordance with 77 Ill. Admin. Code §§ 693 and 697.

E-1.15 HIV/AIDS CASE REPORTING RESPONSIBILITIES

Subgrantee shall comply with the reporting responsibilities as required by the City, including the specific requirements outlined below:

A. Every physician licensed under the provisions of the Illinois Medical Practice Act shall report to the Department in each case that the physician has clinically diagnosed or treated a case of HIV/AIDS infection within 5 days after such diagnosis or treatment. The report shall be made on a form furnished by the Department.

B. All persons required to make reports pursuant to this section must maintain the strict confidentiality of all information and records relating to known or suspected cases of HIV/AIDS in accordance with 77 Ill. Admin. Code §§ 693 and 697.

E-1.16 GIFTS AND INCENTIVES. Subgrantee is prohibited from giving gifts to City or State of Illinois employees. Subgrantee will provide the City with advance notice of Subgrantee's providing gifts, excluding charitable donations given as incentives to community-based organizations in Illinois and clients in Illinois to assist Subgrantee in carrying out its responsibilities under this Agreement.

E-1.17 Additional Provisions

The following additional requirements apply to this Agreement.

Additional information on these requirements can be found on the CDC website at the following Internet address: http://www.cdc.gov/od/pgo/funding/Addtl_Reqmnts.htm

- AR-4 HIV/AIDS Confidentiality Provisions
- AR-5 HIV Program Review Panel Requirements
- AR-6 Patient Care
- AR-8 Public Health System Reporting Requirements
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2020
- AR-12 Lobbying Restrictions
- AR-14 Accounting System Requirements
- AR-15 Proof of Non-Profit Status

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- AR-16 Security Clearance Requirement
- AR-20 Conference Support
- AR-21 Small, Minority, and Women-Owned Business
- AR-23 States and Faith-Based Organizations
- AR-24 Health Insurance Portability and Accountability Act Requirements
- AR-25 Release and Sharing of Data
- AR-26 National Historic Preservation Act of 1966 (Public Law 89-665, 80 Stat. 915)
- AR-27 Conference Disclaimer and Use of Logos
- AR-29 Compliance with E.O. 13513 Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009.
- AR-30 Information Letter 10-006. – Compliance with Section 508 of the Rehabilitation Act of 1973
- AR-31 Research Definition
- AR-32 FY 2012 Enacted General Provisions
- AR-33 Plain Writing For information or training on health literacy, go to www.cdc.gov/healthliteracy or www.plainlanguage.gov.
- AR-34 Health Information Technology

Exhibit F
Delegate Agency Grant Agreement
Enhanced Gonorrhea Surveillance Activities /
Safety Net Sexually Transmitted Disease Clinical Preventive Services

INSURANCE REQUIREMENTS

A. The kinds and amounts of insurance required are as follows:

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$500,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City of Chicago is to be named as an additional insured under Subrecipient's and any Subcontractor's policy. Such additional insured coverage shall be provided on ISO endorsement form CG 2010 for ongoing operations or on a similar additional insured form acceptable to the City. The additional insured coverage must not have any limiting endorsements or language under the policy such as but not limited to, Subrecipient's sole negligence or the additional insured's vicarious liability. Subrecipient's liability insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City. Subrecipient must ensure that the City is an additional insured on insurance required from Subcontractors.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work or Services to be performed, Subrecipient must provide Automobile Liability Insurance with limits of not less than \$300,000 per occurrence for bodily injury and property damage.

4) Professional Liability

When any professional consultants perform Services in connection with this Agreement, Professional Liability Insurance covering errors, omissions, or negligent acts, must be maintained with limits of not less than \$500,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work or Services on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

5) Medical/Professional Liability

When any medical Services are performed in connection with this Agreement, Medical/Professional Liability Insurance must be provided to include coverage for errors,

omissions and negligent acts related to the rendering or failure to render professional, medical or health Services with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of 2 years.

6) Builders Risk

When any Subrecipient performs any construction, including improvement, betterments, and/or repairs, Subrecipient must provide All Risk Builders Insurance to cover materials, supplies, equipment, machinery and fixtures that are part of the structure.

B. Related Requirements

If the coverages have an expiration or renewal date occurring during the time for performance of this Agreement, Subrecipient must furnish renewal certificates to the email address and/or website location specified by the City. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Subrecipient is not a waiver by the City of any requirements for Subrecipient to obtain and maintain the specified coverages. Subrecipient must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Subrecipient of your obligation to provide insurance as specified here. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work or Services or terminate this Agreement until proper evidence of insurance is provided.

Subrecipient must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed.

All deductibles or self- insured retentions on referenced insurance coverages must be borne by Subrecipient.

Subrecipient hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

The coverages and limits furnished by Subrecipient in no way limit Subrecipient's liabilities and responsibilities specified within this Agreement or by law.

Any insurance or self- insurance programs maintained by the City of Chicago do not contribute with insurance provided by Subrecipient under this Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Subrecipient maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Subrecipient. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

If Subrecipient is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Subrecipient must require all subcontractors to provide the insurance required in this Agreement, or Subrecipient may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Subrecipient unless otherwise specified in this Agreement. Subrecipient must ensure that the City is an additional insured on the insurance required from Subcontractors.

If Subrecipient or Subcontractors desire additional coverages, the party desiring additional coverages is responsible for the acquisition and cost of such additional protection.

Notwithstanding any provisions in this Agreement to the contrary, the City of Chicago's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

- C. If you need additional information related to insurance, please call the office of the City Comptroller at (312) 744-7923.

Exhibit G
Delegate Agency Grant Agreement
Enhanced Gonorrhea Surveillance Activities /
Safety Net Sexually Transmitted Disease Clinical Preventive Services

COMPLIANCE WITH REQUIREMENTS IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT, AND IMPLEMENTING REGULATIONS BUSINESS ASSOCIATE AGREEMENT

The City of Chicago (“City”) and Subrecipient (“Business Associate”) agree to the following terms and conditions, which are intended to comply with the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, and their implementing regulations:

The terms below that are capitalized and in bold have the same meanings as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act, which is part of the American Recovery and Reinvestment Act of 2009, and the regulations promulgated thereunder, including the privacy, security, breach, omnibus, and enforcement rules, as each may be amended from time to time (collectively, “HIPAA”). See 45 CFR parts 160 and 164.

Specifically, the following terms used in the Business Associate Agreement shall have the same meaning as in HIPAA: **Breach, Business Associate, Data Aggregation, Designated Record Set, Disclosure, Financial Remuneration, Fundraising, Health Care Operations, Individual, Marketing, Minimum Necessary, Protected Health Information (“PHI”), Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.** The term “Breach” has the meaning as set forth in HIPAA when capitalized below, but has the ordinary dictionary meaning when not capitalized below.

For purposes of this Business Associate Agreement, the term “Protected Health Information” or “PHI” includes electronic PHI, also known as ePHI.

1. Interpretation of this Business Associate Agreement. A reference in this Business Associate Agreement to HIPAA means the section in effect or as amended. If there is a dispute as to whether Business Associate is, in fact, a Business Associate, the Business Associate must provide a legal memorandum to the City indicating why the Business Associate does not fall under the definition of Business Associate in HIPAA. If the City disagrees with the legal memorandum regarding the Business Associate’s conclusion that Business Associate is not a Business Associate, the City may choose to report a Breach to the Secretary or take other measures as deemed necessary to ensure the City’s compliance with HIPAA. Any ambiguity or inconsistency in this Business Associate Agreement shall be resolved in favor of a meaning that permits City to comply with HIPAA.

2. Amendment of this Business Associate Agreement. The parties hereto agree to negotiate in good faith to amend this Business Associate Agreement from time to time as is necessary for City to comply with the requirements of HIPAA and for Business Associate to provide services to City. However, no change, amendment, or modification of this Business Associate Agreement shall be valid unless it is set forth in writing and signed by both parties.

3. Designation of HIPAA Officer(s). Business Associate agrees to designate, in writing, a HIPAA Privacy and Security Officer(s) who will communicate with the City’s HIPAA Privacy and Security Officers for purposes of this Business Associate Agreement. Business Associate agrees to notify the City’s HIPAA Privacy and Security Officers of such designation and the contact information of such officer(s):

Stephen Murphy
HIPAA Privacy Officer

Isaac Perez
HIPAA Security Officer

312- 747-9605
hipaaprivacyofficer@cityofchicago.org

312- 744-2994
hipaasecurityofficer@cityofchicago.org

4. Uses and Disclosures of PHI. Business Associate must not use or further disclose Protected Health Information ("PHI") other than as permitted or required by this Business Associate Agreement, as necessary to perform the services in the underlying Agreement, or as Required By Law.

- a. Business Associate will not sell PHI or use or disclose PHI for the purposes of marketing or fundraising.
- b. Business Associate shall not directly or indirectly receive financial remuneration in exchange for any PHI of an individual or in exchange for making communications regarding treatment or health care operations purposes, unless otherwise allowed in this Business Associate Agreement.
- c. If Business Associate is authorized to use PHI to provide the City with de-identified information, Business Associate is not permitted to use or disclose the de-identified information for purposes other than those specified in the Agreement.
- d. Business Associate may use PHI to provide data aggregation services to the City, relating to the health care operations of the City.
- e. Business Associate may use and disclose PHI received by the Business Associate in its capacity as a Business Associate to the City, if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that, as to any such disclosure, the following requirements are met:
 - i. The disclosure is required by law; or
 - ii. The Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been the subject of a Breach.
- f. Except as otherwise limited in this Business Associate Agreement, Business Associate may use and disclose PHI obtained from or on behalf of the City to perform functions, activities, or services for, or on behalf of, the City as specified in the Agreement, provided that such use or disclosure would not violate HIPAA if done by the City.

5. Minimum Necessary. Business Associate shall use, disclose, or request only the minimum necessary PHI necessary to accomplish the intended purpose of the use, disclosure, or request. Business Associate represents that the PHI used, disclosed, or requested by Business Associate is the minimum necessary to carry out purposes of the Agreement. Prior to any use or disclosure, Business Associate shall determine whether a limited data set would be sufficient for these purposes.

6. Safeguards of PHI. Business Associate must use appropriate safeguards with respect to PHI that it creates, receives, maintains, or transmits on behalf of the City to prevent the use or disclosure of PHI other than as provided for in this Business Associate Agreement. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of HIPAA privacy regulations (45 CFR Part 164, subpart E) and must limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure. The safeguards must also reasonably and appropriately protect the confidentiality, integrity, and availability of PHI that Business Associate creates, receives, maintains, or transmits on the City's behalf as required by the HIPAA security regulations (45 CFR Part 164, subpart C). Where applicable, Business Associate must use appropriate safeguards and comply with the HIPAA security regulations (45 CFR Part 164, subpart C) with respect to electronic protected health information, to prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement. Where feasible, PHI will not leave the City's facilities and will be accessed under the supervision of City employees.

7. Applicability of Business Associate Agreement to Subcontractors and Agents. Business Associate must ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information, by entering into a contract or other arrangement that complies with HIPAA. An agent or subcontractor of a Business Associate is not permitted to use or disclose PHI in a manner that would not be permissible if done by the Business Associate. Business Associate will ensure that its subcontractors and agents to which Business Associate is permitted by this Business Associate Agreement or in writing by the City to disclose PHI agree to implement reasonable and appropriate safeguards to protect PHI. Business Associate will obtain reasonable assurances from any subcontractors and agents to which Business Associate discloses PHI that the subcontractor or agent will hold PHI in confidence and make further uses or disclosures of PHI only for the purpose for which Business Associate disclosed PHI to the subcontractor or agent or as Required By Law.

Business Associate will obtain reasonable assurances that any subcontractor or agent to which Business Associate discloses PHI will notify the Business Associate within 5 calendar days (who will, in turn, notify the City within 5 calendar days, as described below) of any instance in which the subcontractor or agent becomes aware of a Breach of unsecured PHI; possible Breach of unsecured PHI; any security incident of which it becomes aware, including: any attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI; or any attempted or successful interference with agent or subcontractor's system operations of which agent/subcontractor becomes aware.

Agent/subcontractor is not required to report the following types of unsuccessful security incidents: pings and other broadcast attacks on agent/subcontractor's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.

If a delay is requested by a law enforcement official in accordance with 45 CFR 164.412, agent/subcontractor may delay notification to Business Associate for the time period specified in HIPAA. Agent or subcontractor's report will include the information described in 45 CFR 164.404(c) and such other information as the Business Associate or the City may reasonably request.

8. Reporting of Breaches, Potential Breaches, and Security Incidents. Business Associate must report to the City any use or disclosure of the PHI not provided for by this Business Associate Agreement of which it becomes aware, as well as any Breach of Unsecured PHI; potential Breach of unsecured PHI; any security incident of which it becomes aware; any attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI; or any attempted or successful interference with Business Associate's system operations of which Business Associate becomes aware.

Business Associate will make the report to the City's HIPAA Privacy and Security Officers not more than five (5) calendar days after Business Associate discovers such non-permitted use or disclosure, Breach, security incident, or other incident as described above. Business Associate shall provide any reports or notices required by HIPAA as a result of Business Associate's Breach. On behalf of the City, Business Associate will provide such reports or notices to any party or entity (including but not limited to media, Secretary, and individuals affected by the Breach) entitled by law to receive the reports or notices. Business Associate agrees to pay the costs associated with notifying individuals affected by the Breach, which may include, but are not limited to, paper, printing, and mailing costs.

Business Associate is not required to report the following types of unsuccessful security incidents: pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use, or disclosure of PHI.

If a delay is requested by a law enforcement official in accordance with 45 CFR 164.412, Business Associate may delay notifying City for the time period specified in HIPAA. Business Associate's report will

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include the information described in 45 CFR 164.404(c) and such other information as the City may reasonably request.

9. Mitigation and Penalties. Business Associate must mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Breach or of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement. Business Associate shall take reasonable steps to put corrective measures in place to prevent future Breaches (such as retraining employees and upgrading security systems). At the City's request, Business Associate shall take reasonable steps to mitigate the harm to affected Individuals whose PHI has been or may have been compromised as a result of a Breach by Business Associate, including obtaining credit monitoring services and offering identity theft insurance. To the extent that the City incurs civil or criminal monetary penalties as a result of a Breach by the Business Associate, the Business Associate agrees to reimburse the City for such penalties.

10. Designated Record Sets - Access. If the Business Associate has PHI in a Designated Record Set, then Business Associate must provide access to or otherwise make available, at the request of the City, and in the time and manner designated by the City, PHI in a Designated Record Set, to the City or, as directed by City, to an Individual or the individual's designee, in order to meet the requirements under 45 CFR 164.524.

11. Designated Record Sets – Amendments. If the Business Associate has PHI in a Designated Record Set, then Business Associate must make any amendments to PHI in a Designated Record Set that the City directs or agrees to pursuant to 45 CFR 164.526 at the request of the City or an Individual, and in the time and manner designated by the City, or take other measures as necessary to satisfy the City's obligations under 45 CFR 164.526.

12. Internal Practices, Books, and Records. Business Associate must make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the City available to the Secretary for purposes of determining compliance with HIPAA. Business Associate also must make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, the City available to the City in a time and manner designated by the City, for purposes of the Secretary determining City's compliance with HIPAA.

13. Accounting of Disclosures - Documentation. Business Associate must document the disclosures of PHI and information relating to such disclosures as would be required for City to respond to a request by an individual for an accounting of disclosures of PHI in accordance with HIPAA, specifically 45 CFR 164.528.

14. Accounting of Disclosures – Provision of Information. Business Associate must provide to City or an individual, in time and manner designated by City, information collected which relates to the disclosure of PHI, to permit City to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. If the Business Associate receives a request for accounting of disclosures directly from the individual, the Business Associate must respond to such request for an accounting of disclosures, provide the accounting of disclosures to the individual within the time required by 45 CFR 164.528, and provide the information regarding such request to the City, in the time and manner designated by the City.

15. Survival, Termination, and Return or Destruction of PHI. Upon termination of this Business Associate Agreement for any reason, the Business Associate's obligations under these contractual obligations shall survive termination and remain in effect:

(a) until Business Associate has completed the return or destruction (in accordance with the United States Department of Health and Human Services' Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, or successor guidance documents), at the City's option, of all of the PHI provided by

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City to Business Associate, or created, maintained, or received by Business Associate on behalf of City, and

(b) to the extent that Business Associate retains any PHI, e.g., Business Associate retains only the PHI which is necessary for its own management and administration or to carry out its legal responsibilities.

Upon the expiration or termination of the underlying Agreement, if feasible, the Business Associate must either:

(1) return all PHI received from the City, or created, maintained, or received by Business Associate on behalf of the City, which the Business Associate still maintains in any form, to the City or

(2) destroy it, at the City's option (in accordance with the United States Department of Health and Human Services' Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals, or successor guidance documents).

This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

If Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate shall require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Business Associate Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Business Associate Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

In the event of a breach of the terms of these contractual obligations, the cure and remedies of the Agreement shall govern. HIPAA's privacy rule (45 CFR § 164.504(e)(2)) requires that the Business Associate will authorize termination of this Business Associate Agreement by the City, if the City determines that the Business Associate has violated a material term of these contractual obligations.

16. Compliance with Obligations. To the extent the Business Associate is to carry out one or more of City's obligation(s) under Subpart E of 45 CFR Part 164, the Business Associate must comply with the requirements of Subpart E that apply to the City in the performance of such obligation(s). Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the City.

17. No Third Party Rights. The terms and conditions of this Business Associate Agreement are intended for the sole benefit of Business Associate and City and do not create any third party rights.

18. Governing Law. To the extent not preempted by federal law, the Agreement shall be governed and construed in accordance with the laws of the State of Illinois.